Supreme Court, U.S.
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CASE NO. 03-__

IN THE UNITED STATES SUPREME COURT

THE STATE OF FLORIDA,
Petitioner,
vs.
ROBERT ARTHUR HART,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Order Denying Petition For Writ of Habeas Corpus, U.S. Dist. Court, August 30, 2001 ..... A-52-77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-4200-CIV-GOLD/SIMONTON

ROBERT ARTHUR HART,

Petitioner,

v.

MICHAEL W. MOORE
Secretary, Florida
Department of Corrections,

Respondent,

and

THE ATTORNEY GENERAL
OF THE STATE OF FLORIDA,

Additional Respondent.
_____/

ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS

I. INTRODUCTION

Robert Hart, a person now in custody of the State of Florida under a sentence of life imprisonment, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. 2254 [D.E. # 1] on November 3, 2000, claiming that he is being held in violation of

the Fifth Amendments to the Constitution of the United States. The Respondents have filed a response in opposition to the petition [D.E. 11]. Hart has filed a reply [D.E. # 14]. The Court held a status conference on December 4, 2000, soon after the case was filed. The parties agreed that an evidentiary hearing was not necessary. Oral argument was held on April 13, 2001.

II. BACKGROUND

On July 20, 1994, Hart and four co-defendants were indicted for two counts of first degree murder, two counts of armed robbery, armed kidnaping, armed burglary, and the unlawful possession fo a firearm while engaged in a criminal offense [Ex. A, pp. 1-7]. Following a jury trial, Hart and his co-defendants were found guilty and sentenced.

Prior to the commencement of the jury trial, Hart filed a motion to suppress his statements, admissions and/or confessions with the Eleventh Judicial Circuit in and for Dade County, Florida (Case No. F94-22487)[Ex. A, pp. 37-84]. The motion was significantly detailed. By the motion, Hart raised three

arguments. First, he claimed that his waiver of his right to remain silent under both the United States and Florida Constitution was invalid and involuntary because he was tricked into the waiver by an affirmative police misrepresentation as to the nature and scope of the subject interrogation [Ex. A, p. 61]. Second, he claimed that his oral and recorded statements were obtained by the police in violation of this Sixth and Fifth Amendment right to counsel [Ex. A, p. 67]. Finally, he argued that his oral and recorded statements were not freely and voluntary given, as they were obtained by the police through the use of threats and direct or implied promises of leniency and benefits [Ex. A, pp. 76].

The trial judge conducted an evidentiary hearing on Hart's motion to suppress on November 6, 1995. [1]At the conclusion of the hearing, the trial judge requested memoranda of law on all issues and indicated that she was "going to issue an order". [Ex. A, p. 866]. Evidently, the trial judge signed an order

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[1] Petitioner's co-defendants also filed motions to suppress. The trial judge conducted a single hearing on all the motions.

on March 12, 1996 [Government's Supp. Ex. 1], with copies furnished to counsel. For whatever reason, the trial judge's order was not recorded of record until August 4, 1999. It does not appear, therefore, in the index of proceedings which was furnished to the Florida Third District Court of Appeal. In their appellate briefs to the Florida Third District Court of Appeal, neither party made reference to the order. Both parties stated that the record did not indicate if the trial court ever ruled on Hart's motion to suppress. Hart claimed that the fact that the defense counsel renewed his motion during the trial is an indication that the court denied the motion. [Ex. C, Appellant's Brief, p. 7 n. 1: Government's Brief, p. 14 n. 4]. The official appellate index affirms that the transcripts of both September 15th and November 14th suppression hearing were filed with the Florida Third District Court of Appeal.

In his main brief, Hart argues at length that the trial court erred in denying his motion to suppress his confession in that it was illegally obtained in violation of the Defendant's rights

pursuant to Article 1, Sections 9 and 16 of the Florida Constitution and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution [Ex. C, Appellant's brief, pp. 15 through 30]. A complete recitation of the suppression hearing was addressed by both parties in their presentation of the facts. Accordingly, the Florida Third District Court of Appeal had before it the full record below, although the trial judge's ruling was not explicated. Upon review, the Third District Court of Appeal issued a *per curiam* opinion affirming Hart's conviction. *Hart v. State*, 741 So. 2d. 595 (Fla. 3rd DCA 1999). In its opinion, the Third District Court of Appeal cited to *State v. Owen*, 696 So. 2d 715 (Fla. 1997), *cert. denied, Owen v. Florida,* 522 U.S. 1002, 118 S.Ct. 574 (1997); *Adams v. State*, 412 So. 2d 850 (Fla. 1982), *cert. denied*, *Adams v. Florida*, 459 U.S. 882, 103 S. Ct. 182 (1982); and *Dell v. State*, 661 So. 2d 1305 (Fla. 3rd DCA 1995). [Ex. F]. Hart filed a motion for rehearing, arguing that *Owen* was inapplicable to the instant case [Ex. G]. The motion for rehearing was denied. [Ex. H].

III. THE SUPPRESSION HEARING.

The testimony at the suppression hearing establishes that North Miami Beach detectives wanted to interrogate Robert Hart concerning two homicides at the "Elite Photography Studio," a private strip club. (Ex. A, p. 508). One of the officers was Detective Hill. Hill knew Hart and his grandmother (Hart's guardian) from a prior case involving a burglary and credit card theft. *Id.* Hill was directed to bring Hart to the police station. (Ex. A, p. 509). Hill was accompanied by Detective Dareden and Nelson. *Id.* Hill arrived at Hart's home and told his grandmother that he needed to talk to Hart at the police station. (Ex. A, p. 510). She raised no objection. *Id.* At the time, Hart was not under arrest. *Id.* He was not handcuffed. *Id.* He was taken without restraint to the police station, which was five to six minutes from his home, and placed in the interview room. (Ex. A, p. 511). He voluntarily accompanied Hill. He was not read his *Miranda* rights because he was not under arrest. (Ex. A, p. 530). Initially, only Hill went with Hart. *Id.* They talked about Hart's previous case.

Hill ask Hart if he was in any trouble since the last arrest. (Ex. A. p. 513). Hart said no. *Id.*

As Hill was leaving the interview room, he told Hart that another detective wanted to talk with him about another case. (Ex. A, p. 514). Hart did not acknowledge or say anything. *Id.* He did not tell Hart that he could go home, but Hart was not under arrest. (Ex. A at 529, 531). Shortly after Hill left the interviewing room, Detective Michael Mauer arrived. (Ex. A, p. 533). Mauer was involved in the investigation of the homicide. He had already known Hart for a few years. (Ex. A, p. 541). He told Hart that he wished to speak with him. (Ex. A, p. 542). Mauer was not wearing a weapon. *Id.* He advised him of his *Miranda* rights based on the established form. (Ex. A, pp. 542, 544-547). Hart said he knew his rights based on prior arrests and form when Hart was a victim of a crime. (Ex. A., p. 542, 558). Not withstanding, Mauer reviewed his rights with him again in detail. *Id.* According to Mauer, Hart was coherent at the time and appeared to understand what was said. *Id.* Hart was 17 years old at the time.

(Ex. A, p. 547). He understood English and did not give answers inconsistent with questions. *Id.* Mauer believed Hart to be alert, coherent, fully articulate, and able to exactly understand what was being discussed. (Ex. A, p. 562). After his rights were read, Mauer asked him if he was willing to answer questions without the presence of an attorney. (Ex. A, p. 545). Mauer told him to mark "yes" on the form if he agreed. If he did not agree, Mauer instructed him to mark "no." *Id.* Hart initialed "yes" on the form. *Id.* Mauer had him sign the form, whish says that the statement is signed of his own free will without any threats or promises having been made. *Id.*

After the form was signed, Mauer told Hart that he was investigating a homicide that occurred at a photo place, and that he wanted to find out what Hart knew about it. (Ex. A, p. 547-548). Hart said that he did not know anything about it. *Id.* Hart did not ask for an attorney before responding, nor did he indicate that he was unwilling to speak. *Id.* Mauer then told him that his photo had been picked out of a line up and that he was being

investigated. *Id.* At that point, Hart told Mauer that he wished to talk to with Detective Judi Shuster, who also worked with the North Miami Police Department (Ex. A, p. 548), but he did not ask for his grandmother or for a lawyer. (Ex. A, p. 549). Hart's grandmother was at the police station. (Ex. A, p. 566). Hart was not told that she was present until after his statement was taken. *Id.*

Mauer then arranged for Shuster to come to the station. *Id.* She arrived at approximately 2:00 p.m. (Ex. A. p, 575). Before Mauer left the room, Shuster asked Hart if his initials were on the *Miranda* form. (Ex. A, p. 564). She noted that they were. *Id.* Mauer left the room and did not reappear until Shuster later called him back int the interview room and stated that Hart wished to give a taped statement. *Id.* After Mauer took the taped statement, he had no further conversations with Hart. (Ex. A. p, 555). At no time during the taped interview did Hart indicate he wished to speak to a lawyer or any one else. (Ex. A, p. 555, 556). Mauer's

contact with Hart commenced around 1:00 p.m. and ended around 4:00 p.m. (Ex. A, p. 557).

Shuster testified that she knew Hart from working gangs and juveniles. (Ex. A, p. 573). She describes their relationship as "friendly," and stated that Hart knew she was a police officer. Id. At the time she spoke with Hart, she was wearing jeans and a t-shirt, not a uniform. *Id.* She understood that Hart believed he was under arrest. (Ex. A, p. 608). He was eating pizza. (Ex. A, p. 577). Hart did not complain about his treatment by the police. *Id.* When he finished eating, Shuster asked Hart why he wanted to talk with her. (Ex. A, p. 578). None of the discussion which followed was on tape. The only taping was of the confession.

Hart asked her if he was in "big trouble." *Id.* She replied that he was in the "biggest trouble" he could ever be in. *Id.* He asked Shuster what could happen to him. *Id.* She replied that if he was tried as an adult, he could be given death penalty. *Id.* He inquired whether he was to be tried as a juvenile or an adult. *Id.* She replied that she did not know, but surmised that, because of

the charges, it would not remain in juvenile court. (Ex. A, p. 579). Hart asked what she would do if she were in his shoes. *Id.* She told him that she could not answer that question, and that he had to make his own decision. *Id.* She told him to think about it. *Id.* She then left the room for five minutes. *Id.*

When Shuster returned to the interview room, Hart told her "lets get started." *Id.* He then asked what are the "pros and cons" of having an attorney in her opinion. (Ex. A, p. 580). She replied, "[I]f you have an attorney, he'll come in. He'll protect your rights. He'll tell you what to answer, what not to answer, and he'll be here for you." *Id.* She said this was a "pro." She then said, "[T]he con, in my opinion, is I'm going to want to ask you questions and he's going to tell you that you can't answer me." *Id.* Shuster testified that she answered Hart " in her opinion." *Id.* She did not advised him not to obtain counsel. *Id.* He did not question her about his *Miranda* rights. *Id.* Shuster told Hart that anything he told her she would tell the state. *Id.* None of this discussion was on tape. (Ex. A, p. 582).

After this discussion about the "pros and cons," hart said, "let's get started." (Ex. A, p. 582). Shuster asked him to state what happened on the evening of July 2nd . *Id.* During the time she was with Hart, he never asked for a lawyer. (Ex. A, p. 583). Nor did he request to speak to his grandmother, or express a desire to leave. *Id.* He never indicated to Shuster that he was uncomfortable speaking with her and wished to discontinue the taping. *Id.*

Hart testified that Shuster told him that he was in "a lot of trouble" and that he should help her and talk to her (Ex. A, p. 717-718). He claimed that he asked her for a lawyer at the time. *Id.* Hart said he asked Shuster for a lawyer a second time and she told him that she could not help him if he got a lawyer. *Id.* He testified that she told him that there were pros and cons of him getting a lawyer. *Id.* According to Hart, when Shuster told him that the lawyer would protect his rights he told her that he wanted a lawyer. *Id.* He claimed that the detective ignored his request and promised to help him by talking to the judge and prosecutor.

Id. Hart testified further that after Shuster told him that he could be sentenced to death, he again requested a lawyer, and she told him that she would not be able to help if he got a lawyer. (Ex. A, p. 719-20).

Hart further testified that Shuster left the room for about fifteen minutes, and that upon her return she asked what he wanted to do. According to Hart, he told her again that he wanted a lawyer and she insisted that she would not be able to help him if he was represented by counsel. (Ex. A, p. 721). Hart testified that, at that point, he told her of his involvement in the murders (Ex. A. p, 721).

Hart said at some point during the interview he asked Shuster's opinion as to whether he should get a lawyer and she told him that it would hurt "us" more than it would help. (Ex. A, p. 721-22). According to Hart, he gave the statement because he thought that Shuster would help him. (Ex. A, p. 722).

On cross-examination, Hart said he knew that he had a right to remain silent and that he could not be compelled to give

a statement (Ex. A, p. 726). He claimed that he invoked his right to remain silent with Detective Mauer because he did not trust him but that he trusted Shuster. (Ex. A, pp. 727-28, 748). He conceded that he did not consider Shuster's offer to speak to the prosecutor and the judge as a promise, but he felt that she would help him because she was his friend. (Ex. A, p. 760).

The trial judge found that Hart's testimony that he continuously asked for an attorney was not credible. (Supp. Ex. 1, p. 7). The trial judge further found that Hart's conversation with Shuster "weighs the possibility of an attorney" but could hardly qualify as an unequivocal request for counsel. (Supp. Exh. 1, p. 17). The trial judge found that Hart never made such a request in his tape statement, and that he was advised of his right to an attorney on the tape and prior to giving any statement. The trial judge found that Hart's statements were freely, voluntarily and intelligently made. (Supp. Ex. 1, p. 8).

IV. STANDARD OF REVIEW.

Hart's petition for writ of habeas corpus was filed on November 3, 2000. As such, it is governed by 28 U.S.C. § 2254, as amended by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), Pub.L. No. 104-132, 110 Stat. 1218 (1996), which was effective as of April 24, 1996. The AEDPA establishes a more deferential standard of review of state habeas judgments. See 28 U.S.C. §; *Williams v. Taylor*, 529 U.S. 362, 402-03, 120 S. Ct. 1495 (2000). The Eleventh Circuit has recently articulated the applicable standard of review in *Fugate v. Head*, 2001 WL 930557 (11th Cir. August 16, 2001). As follows:

> First, § 2254 (e) (1) provides for a highly deferential standard of review for factual determinations made by state court. "[A] determination of a factual issue made by a State Court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254 (e) (1); Bottoson v. Moore, 234 F. 3d 526, 531 (11th Cir. 2000).
>
> Second, § 2254 (d) allows federal habeas relief for a claim adjudicated on the merits in state court only where that adjudication in state court: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly

established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d). Section 2254 (d) (1) "places a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus with respect to claims adjudicated on the merits in state court" by requiring satisfaction of one of two conditions for issuance of the writ. Williams, 529 U.S. at 412, 120 S. Ct. 1495. The Supreme Court has explained the requirements in § 2254 (d) (1) as follows:

> **Under the "contrary to" clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Unreasonable application" clause, a federal habeas court may grant the writ of the state court identifies the correct governing legal principle from this Court's decisions but unreasonable applies that principle to the facts of the prisoner's case. Id. at 412-13, 120 Ct. 1495.**

> The "contrary to" clause in § 2254 (d) (1) "suggests that the state court's decision must be substantially different" from the relevant Supreme Court precedent. Id. at 405, 120 S.Ct. 1495. Although a state court's decision that "applies a rule that contradicts" the governing Supreme Court law is "contrary," id, a state court decision that applies "the correct legal rule" based on Supreme Court law to the facts of the petitioner's case would not fit within the "contrary to" clause even if the federal court might have reached a different result relying on the same law. Id. at406, 120 S. Ct. 1495. In evaluating the "unreasonable application inquiry," id. at 409, 120 S. Ct. 1495, the federal court should consider whether the state court's application of the law was "objectively unreasonable" and should not apply the subjective "all reasonable jurists" standard, id. at 410, 120 S.Ct. 1495. The Supreme Court clarified that, under 28 U.S.C. § 2254(d) (1), the federal court may not issue the writ unless it finds that the state court applied Supreme Court law unreasonably. Id. at 411, 120 S. Ct. 1495.

Id. 2001 WL at *6 (emphasis added).

V. DISCUSSION.

1. *Effect of Finding Below*.

Prior to the AEDPA, § 2254 (d) (8) provided that factual findings by a state court were presumed to be correct unless "the Federal court on consideration of the record as a whole concludes

that such factual determination is not fairly supported by the record." 28 U.S.C.A. § 2254 (d) (8)(1994). Section 2254(e) (1), as enacted by the AEDPA, not only retains the presumption of correctness but also adds that the petitioner has the "burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. §2254 (e) (1). Fugate v. Head, 2001 WL at *27 n. 11. In this case, the trial judge made factual findings involving credibility by a written order, which, for some unknown reason, was not recorded or brought to the attention of the Florida Third District Court of Appeal. Evidently, the trial judges's order, recorded August 4, 1999, was entered of record prior to the rendition of the Third District Court of Appeal's decision on September 8, 1999. What is important for this record, however, is that a full and complete record was made at the suppression hearing and that the state trial court made findings relative to that record, although those findings were not before the Third District Court of Appeal when the case was reviewed on appeal. Nonetheless, when the record as a whole is considered, I

concluded that the state trial court's factual findings are fairly supported by the record, and that the Petitioner has not met his burden of rebutting the presumption of correctness by clear and convincing evidence.

2. *Effect of Davis v. United States*

By its *per curiam* decision, the Florida Third District Court of Appeal affirmed the trial judge's suppression order by reference to *State v. Owen*, 696 So. 2d 715 (Fla. 1997). In *Owen*, the Florida Supreme Court was asked whether the Florida Constitution created a different standard from the federal constitution regarding a suspect's right under *Miranda*. The Florida Supreme Court adopted the rule in *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350 (1994), whereby the United States Supreme Court established a bright-line test. According to *Davis*, once a defendant waives his or her *Miranda* rights, an officer is not required to clarify a suspect's equivocal request for counsel and may continue questioning a suspect until the suspect makes a clear assertion of the right to counsel. *Davis*, 512 U.S. at 458-59,

114 S. Ct. at 2355. In fact, the Court the Court stated: "*If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.*" *Id.* at 461-62, 114 S.Ct. At 2356 (emphasis added). In *Owen*, the Florida Supreme Court adopted this rule and held that, "Florida's Constitution does not place greater restrictions on law enforcement than those mandated under federal law when a suspect makes an equivocal statement regarding the right to remain silent." *Owen*, 696 So.2d at 720.

In his habeas petition, Hart argues that this Court is free to review the issue de novo because the state appellate decision cites a case which is "contrary to" settled Supreme Court case law. [Memorandum of Law in Support of Petition for Writ of Habeas Corpus, p. 9]. Hart claims that *Davis* does not apply to the instant cause because, according to Hart, this case involves the police misadvising him about the nature of the rights **before** he elected to waive them.

As noted above, a state-court decision is the Supreme Court's clearly established precedent: (1) if the state court applies a rule that contradicts the governing law as set forth in the Supreme Court case law, or (2) if the state court confronts a set of facts that are materially indistinguishable from those in a decision of the Supreme Court and nevertheless arrives at a result different from Supreme Court precedent. *Williams v. Taylor*, 529 U.S. at 405-06, 120 S.Ct. at 1519-20. Neither situation applies here. The Florida Third District Court of Appeal correctly cited to, and applied, *Owen*, which in turn relied on *Davis*. Hart's discussion with Shuster, after his valid execution of the *Miranda* waiver form, was insufficiently clear to invoke his right to remain silent. Under similar circumstances, the Eleventh Circuit, applying *Davis*, withdrew from its prior decisions creating a duty to clarify a suspect's intent upon an equivocal invocation of counsel. *See Coleman v. Singletary*, 30 F 3d 1420, 1424 (11th Cir. 1994) ("because we are bound to follow the Supreme Court's holding in *Davis*, our decisions creating a duty to clarify a suspect's intent

upon an equivocal invocation of counsel are no longer good law. Furthermore, we have already recognized that the same rules should apply to a suspect's ambiguous or equivocal references to the right to cut off questioning as to the right to counsel.") (citations omitted), *cert. denied by*, 514 U.S. 1086, 115 S.Ct. 1801 (1995).

2. *Miranda and Moran v. Burbine.*

Next, Hart argues that the Third District Court of Appeal's opinion was contrary to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966). Hart argues that Shuster's responses to his questions vitiated the impact and purpose of the prior *Miranda* warnings. I disagree. *Miranda* imposed on the police an obligation to follow certain procedures in their dealings with the accused. In particular, prior to the initiation of questioning, police must fully apprise the suspect of the State's intention to use his statements to secure a conviction, and must inform him of his rights to remain silent and to "have counsel present...if [he] so desires." *Miranda*, 384 U.S. at 467-71, 86 S.Ct. At 1624-1926.

Beyond this duty to inform *Miranda* requires that the police respect the accused's decision to exercise the rights outlined in the warnings. "If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, [or if he] states that he wants an attorney, the interrogation must cease." *Miranda*, 384 U.S. at 473-74, 86 S.Ct. at 1627. *See also Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880 (1981).

The threshold inquiry is weather Hart was informed of his *Miranda* rights. Without dispute, the record before the Third District establishes that he was, and that he signed a *Miranda* waiver form. Hart's next claim is that the *Miranda* rights were not waived voluntarily, knowingly, and was thoroughly briefed by the defense and the State. While the Third District's *per curiam* opinion was silent on any analysis, there is no indication that the Third District Court of Appeal's affirmance was contrary to *Miranda* or *Moran v. Burbine*, 475 U.S. 412, 106 S.Ct. 1135 (1986), which explained the two-part inquiry into whether a defendant's waiver of *Miranda* rights was voluntary, knowing,

and intelligent. As required by *Moran v. Burbine*, the relinquishment of the right must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception. Next, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequence of the decision to abandon it. Only if the "totally of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly concluded that the *Miranda* rights have been waived. Id. at 421, 106 S.Ct. At 1141 (*quoting Fare v. Michael* C., 442 U.S, 707, 99 S.Ct. 2560 (1979)) (citations omitted).

Whether applying a *de novo* or deferential standard, the result is the same. The trial judge below already has determined that Hart's assertions at the suppression hearing lacked credibility. [Supp. Ex. 1. p. 7]. By his Petition, Hart does not request a new evidentiary hearing on this issue and no reason is evident from the record to disturb the trial judge's credibility ruling. Rather, the

issue is one of law under the controlling Supreme Court precedents. Given the lengthy record on the suppression hearing, the Third District Court of Appeal's affirmance does not confront a set of facts that are materially indistinguishable from those in a decision of the Supreme Court from which its affirmance is a material departure. Moreover, applying *Moran*, Shuster's response to Hart's questions was not coercive, either alone or in context of the totality of the circumstances. Likewise, Hart's waiver was made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. He agreed that he understood those rights. He stated that he had a right to remain silent and that he could not be compelled to give the statement. [Ex. A, p. 726]. Hart also knew of his right to counsel, and even inquired of Shuster of the pros and cons of obtaining counsel. He was told that the attorney would be there protect his rights, and he would tell Hart not to answer her questions. [Ex. A, p. 581]. Considering the record as

a whole, there is no basis for habeas corpus relief pursuant to § 2254 (d).

WHEREFORE, Hart's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.§ 2254 is **DENIED**.

DONE AND ORDERED this 30 day of August, 2001.

_____
ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

c.c.
United States Magistrate Judge Andrea M. Simonton

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